State of Connecticut
DIVISION OF CRIMINAL JUSTICE

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The Honorable Gary A. Winfield
Assistant Majority Leader
Legislative Office Building, Room 2400
Hartford, Connecticut 06106

Re: Raised Bill No. 5474

Dear Senator Winfield,

As I indicated I would during my testimony before the Committee on March 23, 2016, I am submitting this letter addressing the legality and purpose of taking DNA samples from persons who have been arraigned for serious crimes.

In *Maryland v. King*, 133 S.Ct. 1958 (2013), the United States Supreme Court held that the taking of DNA samples at the time of arrest from persons who have been charged with serious crimes does not violate the fourth amendment prohibition against illegal searches and seizures. While the Court acknowledged that the taking of a sample was a search, it reasoned that the government's interest in identifying the person who has been arrested outweighs the minimal intrusion involved with the taking of a buccal swab. *Id*, at 1970-1980.

In discussing the government's interest, the Court noted that "[a]n individual's identity is more than just his name or Social Security number, and the government's interest in identification goes beyond ensuring that the proper name is typed on the indictment." *Id*, at 1971. "A suspect's criminal history is a critical part of his identity. . . It is a common occurrence that '[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals.' " *Id*, quoting *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. ___, 132 S.Ct. 1510, 1520, 182 L.Ed.2d 566 (2012).

Law enforcement and judicial authorities rely on the criminal history of an individual in making determinations about whether the person is a danger to the community, whether and under what conditions a person should be released, if released whether the person should remain at large, whether the person presents a danger to corrections staff if the individual is incarcerated, and what sentence should be imposed on the individual if he or she is convicted. *Id*, at 1972-1973. It can

also be used to help identify the individual at a later point if he or she escapes. *Id*, at 1975. As the Court noted, the government's interest in knowing the defendant's criminal history "is not speculative. In considering laws to require collecting DNA from arrestees, government agencies around the Nation found evidence of numerous cases in which felony arrestees would have been identified as violent through DNA identification matching them to previous crimes but who later committed additional crimes because such identification was not used to detain them." *Id*, at 1974.

The Supreme Court was well aware that, in order to determine an arrestee's criminal history, law enforcement agencies will enter the DNA profiles obtained into the national CODIS databank where they can be compared to profiles obtained from evidence of unsolved crimes. See, *Id*, at 1972, 1979-1980. That this could result in some additional crimes being solved did not deter the Court from holding that the taking of the samples did not violate the fourth amendment. The fact that the arrestee might have committed other crimes is exactly the sort of information law enforcement authorities and the courts need to know when they are making decisions about release and sentencing in the matter in which the person has been arrested. The Supreme Court noted that the use of DNA in this manner is "no different than matching an arrestee's face to a wanted poster of a previously unidentified suspect, or matching tattoos to known gang symbols to reveal a criminal affiliation, or matching the arrestee's fingerprints to those recovered from a crime scene." *Id*, at 1972. Like the DNA profiles that would be obtained from arrestees would be, fingerprints are entered into a national database where they can be compared with evidence from unsolved crimes. See, *Id*, at 1976-1977 (referencing the National Automated Fingerprint Identification System "AFIS"). DNA is simply a more advanced form of identification, a better fingerprint so to speak. *Id.* This is not a matter left to the discretion of police officers investigating an unsolved crime or crimes. All persons charged with a serious felony must furnish a sample. As the majority opinion noted: "[t]he DNA collection is not subject to the judgment of officers whose perspective might be 'colored by their primary involvement in the often competitive enterprise of ferreting out crime.' " *Id*, at 1970.

The Division would further note that the taking of DNA samples from arrestees could help to exonerate innocent people. As the Supreme Court noted, "the identification of an arrestee as the perpetrator of some heinous crime may have the salutary effect of freeing a person wrongfully imprisoned for the same offense." *Id*, at 1974.

With respect to when the sample should be taken, the Division believes that the sample should be taken as early as possible after the person's arrest. As the Supreme Court noted in *Maryland v. King*, *Id*, at 1977, the FBI already has begun testing procedures that would allow DNA to be processed within ninety minutes. The sooner the information is available the more valuable it is to law enforcement and the courts in making the crucial decisions described above to ensure the safety of the public. Raised Bill No. 5474 provides added protection to the accused in a serious criminal matter by requiring that the sample be taken after arraignment. At the very least, this will ensure that the sample is not taken unless and until a court has found that there is probable cause to believe the defendant committed the crime with which he is charged.

Again, I want to thank you for giving me the opportunity to be heard on Raised Bill No. 5474.

Sincerely,

KEVIN T. KANE
CHIEF STATE'S ATTORNEY

c: Members of the Judiciary Committee